NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Antelope Valley Bus Company, Inc. *and* Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL–CIO, Case 31–CA–24533

August 31, 2000

DECISION AND ORDER

BY TRUESDALE AND LIEBAMAN AND HURTGEN

Pursuant to a charge filed on May 18, 2000, ¹ the General Counsel of the National Labor Relations Board issued a complaint on June 29, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain following the Union's certification in Case 31–RC–7776. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On July 31, 2000, the General Counsel filed a Motion for Summary Judgment. On August 3, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of alleged irregularities in the mail ballot process in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate*

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a California corporation, with an office and place of business in Sylmar, California, has been engaged in the provision of transportation services. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$250,000 and received revenues in excess of \$50,000 from person[s] who meet a Board drect jurisdictional standard. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the mail-ballot election held September 17, 1999 to October 13, 1999, the Union was certified on April 17, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full time and regular part-time drivers employed by the employer at its facilities located at 5733 Sheila Street, Commerce, CA 90040, 948 Lambert Street, Oxnard, CA 93030, and 12776 Foothill Boulevard, Sylmar, CA 91342.

Excluded: All other employees, mechanics, bus washers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since April 26, 2000, the Union has requested the Respondent to bargain, and since May 8, 2000, the Respondent has refused.² We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

¹ Although the Respondent admits that it received a copy of the charge, it denies the complaint allegation that the charge was filed on May 18, 2000. The General Counsel has attached as an exhibit to his Motion for Summary Judgment a copy of the charge, and it clearly shows that it was filed on May 18, 2000. In its response to the Notice to Show Cause, the Respondent states that it "stipulates that the list of exhibits provided by Counsel for the General Counsel attendant to its motion accurately reflects part of the record." Accordingly, we find that the Respondent's denial raises no material issue of fact wananting a hearing.

² Although the complaint does not specifically allege that the Union requested bargaining, the General Counsel has attached as an exhibit to his Motion for Summary Judgment a copy of an April 26, 2000 letter, sent by the Union to the Respondent, in which the Union requested the Respondent to meet and negotiate with it. As stated in fn. 1, above, the Respondent stipulates that this exhibit is authentic. Further, in its May 8, 2000 letter refusing to bargain, the Respondent acknowledged receiving the Union's April 26, 2000 letter. Inasmuch as it is undisputed that the Union requested bargaining, we find the complaint's failure to contain a specific allegation to that effect raises no material issue of fact warranting a hearing.

CONCLUSION OF LAW

By refusing on and after May 8, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Antelope Valley Bus Company, Inc., Sylmar, California, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full time and regular part-time drivers employed by the employer at its facilities located at 5733 Sheila Street, Commerce, CA 90040, 948 Lambert Street, Oxnard, CA 93030, and 12776 Foothill Boulevard, Sylmar, CA 91342.

Excluded: All other employees, mechanics, bus washers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

- (b) Within 14 days after service by the Region, post at its facilities in Commerce, Oxnard, and Sylmar, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 8, 2000.
- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 31, 2000

John C. Truesdale,	Chairman
Wilma B. Liebman,	Member
Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Chauffeurs, Sales Drivers, Warehousemen and Helpers, Local 572, International Brotherhood of Teamsters, AFL–CIO as the exclusive representative of the employees in the bargaining unit.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

Included: All full time and regular part-time drivers employed by us at our facilities located at

5733 Sheila Street, Commerce, CA 90040, 948 Lambert Street, Oxnard, CA 93030, and 12776 Foothill Boulevard, Sylmar, CA 91342.

Excluded: All other employees, mechanics, bus washers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

ANTELOPE VALLEY BUS COMPANY, INC.